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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3644 OF 2019
IN
FIRST APPEAL (ST) NO. 14817 OF 2019

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Smt. Neeta Ashok Kanse & Ors.	...Applicants
<i>Versus</i>	
Smt. Urvashi Ravindra Kanse & Anr.	...Respondents

Mr. Mateen Shaikh, for the Applicants.
Mr. Udayan S. Jain a/w Ms. Akshita Jain, for the Respondent.

CORAM Madhav J. Jamdar, J.
DATED: 21st April 2022

PC:-

1. Heard Mr. Mateen Shaikh, learned counsel appearing for the Applicants and Mr. Udayan Jain along with Ms. Akshita Jain, for the Respondent No.1.

2. Learned counsel for the Respondent No.1 tendered Affidavit-in-Reply, the same is taken on record.

3. Mr. Mateen Shaikh, learned Advocate for the Applicants submits that the Respondent No.2 has been served and affidavit of service to that effect has been filed.

4. By the present Civil Application the prayer to condone the delay in filing the First Appeal is prayed. In the First Appeal the impugned judgment and decree dated 20th April, 2015 passed by the learned Judge, City Civil Court, Greater Bombay in S.C. Suit No.1983 of 2013 is challenged.

5. Mr. Shaikh, learned counsel for the Applicants submits that the impugned judgment and decree was challenged by filing Writ Petition No.9367 of 2015 and the said Writ Petition was dismissed on 14th March, 2019 with liberty to institute an Appeal. He submitted that considering the period during which the Appellants were prosecuting the Writ Petition there is no delay in challenging the impugned judgment and decree.

6. On the other hand, Mr. Udayan Jain along with Ms. Akshata Jain, learned counsel appearing for the Respondent

No.1 submitted that the impugned judgment and decree is dated 20th April, 2015 and the First Appeal challenging the same is filed on 04th May, 2019 and therefore, there is considerable delay in filing the First Appeal. It is further submitted that the delay is not properly explained and the averments regarding illness of Applicant No.8 mentioned in paragraph No.8 is without giving any documentary evidence in that behalf.

7. The record shows that the Applicants are the original Plaintiffs. The learned Trial Court framed the issue of maintainability of the suit and passed the following order:

“Order

1] Preliminary issue answered in the negative. The suit is not maintainable against defendant No.1.

2] Suit is hereby dismissed.

3] No order as to costs.

4] In the circumstances, Chamber Summons No.409/2015 does not survive.

5] Proceeding closed.”

8. The said judgment and decree dated 20th April, 2015 was challenged by the present Applicants by filing Writ Petition No.9367 of 2015 on 29th June, 2015. This Court by order dated 14th March, 2019 dismissed the said Writ Petition by granting liberty to the Applicants to institute an Appeal challenging the impugned judgment and decree dated 20th April, 2015. Thereafter, immediately the present Appeal was lodged on 10th April, 2019.

9. The factual position on record clearly shows that although there is considerable delay in filing the Appeal, the period from 29th June, 2015 to 14th March, 2019 is spent by the Applicants in prosecuting the said Writ Petition No.9367 of 2015. The factual position on record clearly shows that the Applicants were prosecuting the said Writ Petition in good faith. Thus, the said considerable period during which the Applicants were prosecuting the said Writ Petition is required to be taken into consideration.

10. Mr. Udayan Jain, the learned counsel of the Respondent No. 1 failed to point out anything to show that the said proceedings are adopted or prosecuted with malafide intention. In view of this, there are sufficient reasons for condoning the delay and therefore, delay which has been caused in filing the First Appeal is condoned.

11. The Civil Application is disposed of in the aforesaid terms.

(Madhav J. Jamdar, J.)